December 8, 2011

The Honorable Kathleen Sebelius
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Via email to MLRAdjustments@hhs.gov

Re: Texas Medical Loss Ratio Adjustment Request

Dear Secretary Sebelius:

Thank you for the opportunity to submit public comments in response to Texas' request for an adjustment to the medical loss ratio (MLR) rules in the Patient Protection and Affordable Care Act (ACA). While our organizations have distinct missions and represent a range of different populations, we share the goal of ensuring access to quality affordable health care for all Texans. As such, we are writing to express our opposition to the request by the Texas Department of Insurance (TDI) to adjust the 80 percent medical loss ratio requirement in Texas' individual health insurance market to 71 percent, 74 percent, and 77 percent in calendar years 2011, 2012, and 2013, respectively.

Consumers deserve to get good value for their hard-earned premium dollars. The MLR standard in the ACA gives consumers a straightforward explanation of how their premium dollars are spent and sets the minimum level of premiums that must go toward health care and quality improvement at 80 percent in the individual and small group health insurance markets. This standard will help consumers realize greater value from their health insurance by putting reasonable limits on administrative costs, encouraging insurer efficiency, and providing an incentive for plans with low MLRs to either lower premiums up front or pay rebates to consumers.

If the ACA's new MLR requirements were implemented today, insurers would owe rebates estimated at $160 million annually to Texas consumers. Under TDI's proposed adjustment, rebates would be reduced from 2011-2013, causing Texas consumers to lose out on $260 million in rebates over three years.[1] Not only would TDI's request for an adjustment reduce rebates due to Texas families, it would also reduce the incentives for insurers to hold down premium increases, leading to higher premiums over time.

[1] Estimated rebates for 2011-2013 based on 2010 experience as provided in TDI's application.

Texas Individual Market Not Reasonably Likely to be Destabilized

As you know, under MLR regulations the Secretary can grant an adjustment to the 80 percent MLR standard if there is a reasonable likelihood that application of the standard will destabilize the individual market in a state. TDI's application does not demonstrate a reasonable likelihood of market destabilization absent an adjustment. Rather, the application contains the following information that describes a competitive market with little risk of destabilization:

- Texas has more than 40 individual market carriers with a total of 744,988 people enrolled. TDI notes that, "at present, Texas has a diverse market with sufficient competition." Thirty-four insurers cover more than 1,000 lives, making them subject to the new MLR standards.

- The top 8 carriers in Texas all indicate plans to remain in the market. These carriers cover about 90 percent of the market.

- Only two carriers with just 0.68 percent of the market indicated plans to withdraw in a blinded survey from May 2011. If these small carriers exited, it would not destabilize the market.

- On average, carriers are positioned financially to pay rebates if necessary in 2011. On average, underwriting profit is equal to (with larger carriers) or slightly exceeds (with "mid-level" carriers) the estimated rebates due.[2] In other words, carriers on average could fully fund estimated rebates just by shaving underwriting profit margins. And actual rebates could be lower than those estimated in TDI's application. Estimated rebates are based on 2010 experience, before health plans had the incentive and opportunity to reduce administrative costs in response to MLR standards. Since the passage of the ACA in March 2010, carriers have had time to begin adjusting their business models so that they can avoid rebates or pay any necessary rebates and remain profitable.

- TDI has existing regulatory tools that discourage carriers from leaving the market and empower the department to prevent market disruptions. To pull out of the individual market, a carrier must give 180-days advance notice and file a withdrawal plan. TDI has authority to modify or restrict the withdrawal plan if other coverage options are inadequate. If a carrier withdraws, it cannot sell individual health insurance in Texas for five years, meaning it would have to forego access to the greatly expanded and subsidized market that will start in 2014.[3]

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[2] TDI, Request for Adjustment to the Medical Loss Ratio, pp. 2-3 and Figure 1 on p. 6. http://cciio.cms.gov/programs/marketreforms/mlr/states/texas/tx_mlr_adj_request_07292011.pdf.

[3] Texas Insurance Code §§ 827.001-827.011; 28 Texas Administrative Code §§7.1801-7.1808; and 28 TAC § 3.3038.

Proposed Adjustment Fails to Deliver Value for Consumers as soon as is Practicable

TDI asked to set the MLR threshold for 2011 at 71 percent, the average MLR for 2010. TDI's request does not raise the bar for insurers from 2010 to 2011. The ACA became law on March 23, 2010. Insurers have had ample opportunity since then to begin changing their business models to increase their MLRs. While we believe that TDI has not demonstrated the need for any adjustment, if HHS determines Texas needs some transition period, the starting point for 2011 should raise the bar above the 2010 average MLR.

Review of Adjustment Criteria Shows that an Adjustment is Not Justified

Federal regulations direct the Secretary to review the following criteria when to make a determination of the likelihood of market destabilization:

> (a) The number of issuers reasonably likely to exit the State or to cease offering coverage in the State absent an adjustment to the 80 percent MLR and the resulting impact on competition in the State;
>
> (b) The number of individual market enrollees covered by issuers that are reasonably likely to exit the State absent an adjustment to the 80 percent MLR;
>
> (c) Whether absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers;
>
> (d) The alternate coverage options within the State available to individual market enrollees in the event an issuer exits the market, including;
>
> (e) The impact on premiums charged, and on benefits and cost-sharing provided, to consumers by issuers remaining in the market in the event one or more issuers were to withdraw from the market; and
>
> (f) Any other relevant information submitted by the State's insurance commissioner.

TDI's request cannot be justified under any of these criteria, as explained below.

(a) Texas offered little evidence that any insurers will exit the state absent an adjustment

TDI has existing regulatory tools that discourage carriers from leaving the market and empower the department to prevent market disruptions. An insurer must give TDI and enrollees 180-days advance notice before non-renewing individual market health insurance policies.[4] In addition, any carrier that fully or substantially (defined as reducing premium volume by 75 percent of more) withdraws from writing a line of insurance, including individual health coverage, must file a plan of orderly withdrawal with TDI.[5]

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[4] 28 Texas Administrative Code § 3.3038

[5] Texas Insurance Code § 827.003 and 28 TAC §7.1804(a)

Furthermore, state law bars re-entry in the market for five years after withdrawal.[6] As noted in HHS' request for additional information to Texas, 28 TAC § 7.1808 allows carriers that have withdrawn from only one line of insurance to re-enter the market with the approval of the Commissioner. However, 28 TAC §3.3038(f), which speaks specifically to individual market health plans that non-renew business in the state, bars re-entry to the market for 5 years and does not include a provision allowing earlier re-entry with the Commissioner's approval. The 5-year waiting period provides a strong disincentive to carriers that may consider withdrawing from Texas' market in 2012 or 2013 given the greatly expanded and federally subsidized individual market that will be available through the Exchange starting in 2014.

Should a carrier file a withdrawal plan to exit the individual market, TDI has authority to modify, restrict, or limit a withdrawal plan if the commissioner finds that there is not adequate other coverage to protect Texas residents.[7] TDI can use this authority to prevent any potential market disruptions.

TDI identified nine companies that may be more likely to exit the Texas market absent an adjustment because they have the bulk of their business in other states. All of these carriers must meet the 80 percent federal MLR standard in the other states in which they do business, with the exception of the six states in which HHS has granted an MLR adjustment. Given that, there is no reason why they should not be able to achieve an 80 percent MLR in their Texas business as well. Furthermore, four of these companies have substantial profit margins on their Texas individual business (in excess of 15 percent) and another three already meet the MLR standards and do not owe estimated rebates.

TDI surveyed carriers about their intention to leave the market. Only two of the 26 credible carriers that were surveyed indicated they intend to exit the market, and they cover just 0.68 percent of the market. TDI's survey did not ask if carriers intended to leave the market *absent an MLR adjustment*.[8] If these or other carriers do exit the market, this survey does not provide evidence that they would have remained in the market if an adjustment is granted.

The additional information TDI sent to HHS on November 14 lists four individual market insurers that have submitted withdrawal plans to TDI: National Health Insurance Company, Tower Life Insurance Company, American Republic Insurance Company, and World Insurance Company. The withdrawal plan for National Health Insurance Company has been approved, and the other three are still pending.

If these four carriers do exit the market, the impact on competition will be trivial as Texas has over 40 carriers writing individual coverage. It is not uncommon for smaller carriers in the market to stop writing blocks of

[6] TIC § 827.006, 28 TAC § 3.3038(f)

[7] TIC § 827.005(b)

[8] Texas Department of Insurance, Data Call for Potential MLR Adjustments, Instructions and Data Form, April 20, 2011, http://www.tdi.texas.gov/health/datacall.html.

business or even exit the market for any number of reasons, and the fact that a handful of insurers have filed to withdraw over the last year and a half is not necessarily an unusual event.

National Health Insurance Company submitted its withdrawal plan on June 10, 2010, so its decision to leave the market was not contingent on the state seeking an MLR adjustment for 2011.

The cover letter for the withdrawal plans from American Republic Insurance Company and World Insurance Company (both subsidiaries of American Enterprise Group, Inc.) indicates that these insurers are exiting the individual market in every state in which they write, which likely includes both states that have and have not applied for MLR adjustments. As of October 2011, these two companies together covered 7,573 lives, or about 1 percent of the Texas market. The companies have made arrangements with Celtic Insurance Company that allow all current policyholders the option of switching to a guaranteed issue Celtic policy with similar benefits and no underwriting or new pre-existing condition exclusions. This arrangement ensures that current policyholders can maintain continuous coverage.

In its letter deeming the states' application complete, HHS asked TDI for the full withdrawal plans from the four companies that have filed to exit Texas. Unfortunately, these documents are not available for review within the public comment period. We urge HHS to review the withdrawal plans to determine if either National Health Insurance Company or Tower Life Insurance Company had more than 1,000 covered lives in 2011. If they did not, they will not be subject to the MLR rebates, making an MLR adjustment irrelevant to their decision to withdraw.

(b) Few, if any, individual market enrollees are covered by insurers that are reasonably likely to exit the state absent an adjustment.

As noted in TDI's application, all of the top 8 carriers in the market, which together cover about 90 percent of all individual market enrollees, indicated that they plan to stay in the market.

The two insurers that indicated an intention to leave the market through TDI's blinded survey cover fewer than 5,000 enrollees, or about 0.68 percent of the market. TDI's application uses a highly unlikely, worst-case scenario to model the population affected by insurers potentially leaving the market. In the model, not only does TDI assume that all 9 partially-credible carriers that indicated uncertainty about their future market participation actually exit the state, TDI also assumed that another 8 non-credible insurers (those with fewer than 1,000 covered lives) would exit. Non-credible insurers are not subject to the new MLR standards, so any MLR adjustment would have no bearing on whether they stop offering coverage to current enrollees. Even with these highly suspect assumptions, TDI shows that 47,000 people would be affected, or 6.5 percent of the market.

(c)Texas offers no evidence that, absent an adjustment, consumers will be unable to access the services of agents and brokers.

Although TDI expresses concern in its application that carriers may reduce commission rates, which could reduce access to agents by consumers, the state provides no evidence that consumers will have difficulty accessing agents without an MLR adjustment. Minutes from TDI's Technical Workgroup meeting with carriers (Appendix 2 of Texas' application), show that one carrier representative indicated it is "considering cutting" commissions. Another carrier representative offered to provide data on the impact to agents, but it should be noted that TDI did not collect information on changes to agent's commission rates in its survey of carriers to collect data for the MLR adjustment application.

Data provided by the National Association of Health Underwriters to the National Association of Insurance Commissioners (NAIC) show that only one of nine health carriers for which individual market commission rates were collected reduced commission rates between 2010 and 2011, from 15 percent to 12 percent (see attached spreadsheet). In 2011, all nine carriers reported first year commission rates as high as 10 percent, and four carriers reported first year commission rates as high as 15 percent. A recent Kaiser Family Foundation analysis found that agent compensation in the Texas individual market is relatively high, with insurers paying agents $16.92 per member per month in Texas compared to a national average of $12.10 per member per month.[9]

TDI provided no evidence that consumers have encountered or will experience any difficulty accessing the services of agents. In fact, the Insurance Information Institute recently reported that employment of agents and brokers increase by 5,500 nationally between July 2010 and June 2011.[10] In addition, a recent NAIC study found that consumers have not experienced problems accessing agents' services in the states with MLR standards in place prior to the ACA.[11]

(d) Alternate coverage is available to individual market enrollees in Texas if an insurer exits the state.

If an insurer does withdraw from Texas, it is likely that its enrollees would be able to find coverage from one of the remaining carriers. Texas has recent experience with a large carrier withdrawing from the market without causing a market disruption. When Unicare withdrew from the Texas market in 2009, it made arrangements with Blue Cross Blue Shield of Texas to allows its 187,000 enrollees (in the group and non-group markets) to transfer into similar coverage with no underwriting or pre-existing condition waiting periods.[12] As noted earlier, World and American Republic Insurance companies have made similar

[9] Kaiser Family Foundation, statehealthfacts.org, "Health Insurance Broker Compensation, 2010," http://www.statehealthfacts.org/comparemapreport.jsp?rep=108&cat=17.

[10] Insurance Information Institute, "Insurance Industry Employment Trends: 1990-2011," PowerPoint presentation, September 2011.

[11] National Association of Insurance Commissioners, "Report of the Health Care Reform Actuarial (B) Working Group to the Health Insurance and Managed Care (B) Committee on Referral from the Professional Health Insurance Advisors (EX) Task Force Regarding Producer Compensation in the PPACA Medical Loss Ratio Calculation," May 26, 2011.

[12] LifeHealthPro, "Texas Year in Review," February 9, 2011; and the Texas Department of Insurance's withdrawal order for Unicare, Commissioner's Order # 09-0870.

arrangements with Celtic. Should other insurers withdraw, similar arrangements to ensure continuous coverage and prevent market disruption may be possible.

In addition, Texans with pre-existing conditions have access to two high risk pools—the state administered Texas Health Insurance Pool and the federally administered Pre-existing Condition Insurance Plan.

(e) Texas offers no evidence that premiums or cost-sharing would increase or that benefits would be reduced absent an adjustment.

TDI's application shows that granting the adjustment would cause harm to Texas consumers who stand to lose an estimated $260 million in rebates over three years if the requested adjustment is granted. Not only would Texas consumers forego rebates, they would lose the full benefit of the MLR standards driving down rates for the next three years.

Conclusion

Texas has not demonstrated a reasonable likelihood of market destabilization absent an MLR adjustment. Texas has many carriers in the individual market today, and carriers covering the vast majority of Texans indicate plans to remain in the Texas market. TDI has regulatory tools in place to prevent the rapid withdrawal of carriers and help prevent market destabilization. Given this, we respectfully request that you deny Texas' application for an adjustment, which if granted, would cause Texas consumers to lose out on millions in rebates and weaken an important ACA tool that is already helping hold down premium increases for consumers.

Sincerely,

Alamo Breast Cancer Foundation

Center for Public Policy Priorities

Children's Defense Fund-Texas

Gateway to Care

La Fe Policy Research and Education Center

Legacy Community Health Services

Methodist Healthcare Ministries

National Association of Social Workers/Texas Chapter

Texans Care for Children

Texas Impact

Texas Public Interest Research Group

Texas

2011

Carrier	Group Size	Plan Type	Annual Premium	First Year	Renewal
			(If Available)		
360	Individual	1-11 enrolled aps	4%	4% 1st yr renewal, 3% thereafter	
	Individual	12-24 enrolled aps	6%	4% 1st yr renewal, 3% thereafter	
	Individual	25-49 enrolled aps	8%	4% 1st yr renewal, 3% thereafter	
	Individual	50+ enrolled aps	10%	4% 1st yr renewal, 3% thereafter	
	2-50	Medical	5%		
	51+	Medical	Negotiated Model Service Fee		
361	Gap	Medical	15%		
	5-9	Medical	10%		
	10+	Medical	15%		
362	1	Individual	15%		10%
	2-9	Product I	10%		
	10+	Product II	$0-8000	10%	
			$8001-20000	$800 + 6% excess	
			$20001-50000	$1520 + 3.5% excess	
			$50000-150000	$2570 + 1.25% of excess	
			$150001-500000	$3820 + .5 of excess	
			$500,001+	$5570 + .25 of excess	
	Broker may also negotiate commission, i.e. 5% flat, or 7% 1st year, 4% flat renewal				
363	Individual	Medical	12%		4%
364	All	All	10% Flat		
365	2-50	Medical	5%		
366	Individual	Medical	8% Initial Preferred Premium		5% Initial Pref Prem
		Medical	15% Initial Preferred Premium		
	2-50	Medical	4.5%		
	51+	Medical	Standard 5%		
367	Individual	Medical	10%		4%
		Medical	15%		
	2-50	Medical		4.00%	2.00%
368	51+	Medical	5%		
369	2-50	Medical	$0 - 5,000	5%	
			$5,000 - 10,000	5%	
			$10,001 - 15,000	5%	
			$15,001 - 20,000	5%	
			$20,001 - 25,000	5%	
			$25,001 - 30,000	5%	
			$30,001 - 50,000	5%	
			$50,001 - 250,000	3.5%	
			$250,001 - 500,000	2%	
			$500,001 - 2,500,000	1%	
			$2,500,001+	0.5%	

370	Individual	Medical	10% 1st Year	5% yrs 2, 3, & 4	3% yrs 5+
	2-3	Medical	Tier I	4.85%	4.85%
	4-25			4.85%	4.85%
	26-50			4.85%	4.85%
	51-99			3.50%	3.50%
	2-3	Medical	Tier II	5.00%	5.00%
	4-25			5.00%	5.00%
	26-50			5.00%	5.00%
	51-99			4.00%	4.00%
	2-3	Medical	Tier III	5.25%	5.25%
	4-25			5.25%	5.25%
	26-50			5.25%	5.25%
	51-99			4.25%	4.25%
	100+		Negotiated		
371		Option I	10%		n/a
		Option II	15%		5.00%
372	2-50	Medical	5%		
373	2-50	Medical	1st & 2nd Year: 8% 3rd year and beyond: 7%		
374	2-50	Medical	5%		
	51+		5%		
375	Individual	Medical-Under age 60	10%	3% renew yrs 2-4	1% renew yrs 5+
		Medical-Over age 60	5%	3% renew yrs 2-4	1% renew yrs 5+

2010

Carrier	Group Size	Plan Type	Annual Premium	First Year	Renewal
			(If Available)		
360	Individual	1-11 enrolled aps	4%	4% 1st yr renewal, 3% thereafter	
		12-24 enrolled aps	6%	4% 1st yr renewal, 3% thereafter	
		25-49 enrolled aps	8%	4% 1st yr renewal, 3% thereafter	
		50+ enrolled aps	10%	4% 1st yr renewal, 3% thereafter	
	2-50	Medical	5%		
	51+	Medical	$0 - 400,000	4%	
			$400,001 - 1,000,000	3%	
			$1,000,001 - 4,000,000	2%	
			$4,000,001	1%	
361	Gap	Medical	15%		
	5-9		10%		
	10+		15%		
362	1	Individual	15%		10%
	2-9	Product I	10%		
	10+	Product II	$0-8000	10%	
			$8001-20000	$800 + 6% excess	
			$20001-50000	$1520 + 3.5% excess	
			$50000-150000	$2570 + 1.25% of excess	
			$150001-500000	$3820 + .5 of excess	
			$500,001+	$5570 + .25 of excess	
	Broker may also negotiate commission, i.e. 5% flat, or 7% 1st year, 4% flat renewal				

363	Individual	Medical	15%		4%
	1-50	Medical	First $80,000	2.8%	2.8%
			Above $80,000	1.8%	1.8%
364	All	All	10% Flat		
365	2-50	Medical	5%		
366	Individual	Medical	8% Initial Preferred Premium		5% Initial Pref Prem
		Medical	15% Initial Preferred Premium		
	2-50	Medical	5%		
367	Individual	Medical	10%		4%
		Medical	15%		
	2-50	Medical	Healthy Texas	4.00%	2.00%
368	51+	Medical	5%		
370	Individual	Medical	10% 1st Year	5% yrs 2, 3, & 4	3% yrs 5+
	2-3	Medical	Tier I	4.85%	4.85%
	4-25			4.85%	4.85%
	26-50			4.85%	4.85%
	51-99			3.50%	3.50%
	2-3	Medical	Tier II	5.00%	5.00%
	4-25			5.00%	5.00%
	26-50			5.00%	5.00%
	51-99			4.00%	4.00%
	2-3	Medical	Tier III	5.25%	5.25%
	4-25			5.25%	5.25%
	26-50			5.25%	5.25%
	51-99			4.25%	4.25%
371		Option I	10%		n/a
		Option II	15%		5.00%
372	2-50	Medical	5%		
373	2-50	Medical	1st & 2nd Year: 8% 3rd year and beyond: 7%		
374	2-50	Medical	5%		
375	Individual	Medical-Under age 60	10%	3% renew yrs 2-4	1% renew yrs 5+
		Medical-Over age 60	5%	3% renew yrs 2-4	1% renew yrs 5+

2009

Carrier	Group Size	Plan Type	Annual Premium	First Year	Renewal
			(If Available)		
360	Individual	Medical	Level I	15%	7%
			Level II	18%	7%
			Level III	20%	7%
	2-50	Medical	5.50%		
361	Gap	Medical	15%		
	Gap		15%		
362	1	Individual	15%		10%
	2-9	Product I	10%		
	10+	Product II	$0-8000	10%	
			$8001-20000	$800 + 6% excess	
			$20001-50000	$1520 + 3.5% excess	
			$50000-150000	$2570 + 1.25% of excess	
			$150001-500000	$3820 + .5 of excess	

			$500,001	$5570 + .25 of excess
	Broker may also negotiate commission, i.e. 5% flat, or 7% 1st year, 4% flat renewal			
363	Individual	Medical	15%	4%
365	2-25	Medical	8%	3 > in force = 8% or 3 < in force = 5%
	26-50	Medical	7%	3 > in force = 7% or 3 < in force = 5%
366	Ind.	Various Products	15%	10%
			15%	10%
			10%	10%
			20%	10%
			10%	10%
			20%	10%
			20%	10%
			10%	10%
			10%	10%
	2-50		5%	
376	2+	Medical	15%	
370	Individual	Individual	20%	5%
	2-50	Medical	5.25%	
	51-99		4%	
	100+		Negotiated	
371		Option I	10%	n/a
		Option II	15%	5.00%
372	2-50	Medical	5%	
377	2-50	All	10%	
373	2-50	Medical	10%	8%
378	Individual	Medical	20%	7%
		Medical	15%	
	2-99	Medical	$0-500,000+	5%
374	2-50	Medical	5%	

Data submitted by the National Association of Health Underwriters to the National Association of Insurance Commissioners Professional Health Insurance Advisors (EX) Task Force, Spring 2011, Data referenced by http://www.naic.org/documents/committees_b_exposure_110607_phia_charge_report.pdf.